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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

FREEDOM NORTHWEST)	
CREDIT UNION,)	Case No. 3:19-cv-351
)	
Plaintiff,)	
)	COMPLAINT
vs.)	
)	
NATIONAL CREDIT UNION)	
ADMINISTRATION,)	
)	
Defendant.)	
)	

COMES NOW, Plaintiff, FREEDOM NORTHWEST CREDIT UNION, by and through its attorney of record, Samuel T. Creason of Creason, Moore, Dokken & Geidl, PLLC, for cause of action against the above-named Defendant, alleges as follows:

COMPLAINT - 1

Creason, Moore, Dokken & Geidl, PLLC
P.O. Drawer 835, Lewiston, ID 83501
(208) 743-1516; Fax: (208) 746-2231

I. PARTIES

1.1. Freedom Northwest Credit Union (hereinafter “FNWCU”) is an Idaho State chartered credit union authorized to do business in the State of Idaho, with its principal place of business in Idaho.

1.2. The National Credit Union Administration (hereinafter “NCUA”) is an independent agency of the federal government of the United States of America.

1.3. NCUA is subject to the requirement set forth in 5 U.S.C. § 552.

1.4. NCUA is an agency as that term is defined by 5 U.S.C. § 551(1).

1.5. FNWCU is a “person” as that term is defined by 5 U.S.C. § 551(2).

1.6. FNWCU is entitled to the right of public information from NCUA, as set forth in 5 U.S.C § 552.

II. JURISDICTION & VENUE

2.1. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

2.2. Venue lies in the District Court of the District of Idaho pursuant to 5 U.S.C. § 552(a)(4)(B)

III. FACTS

3.1 FNWCU brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking access to records maintained by NCUA.

3.2 By letter dated June 5, 2019, FNWCU sought access to certain records. A copy of that request is attached hereto as Exhibit A, and hereinafter referred to as “FOIA Request”.

3.3 The records requested in the FOIA Request are “agency records” as that term is defined by 5 U.S.C. § 552(a)(4)(B).

3.4 FWNCU has a statutory right to examine the records requested in the FOIA Request, pursuant to 5 U.S.C § 552.

3.5 NCUA did not respond to the FOIA Request until a letter dated July 23, 2019. A copy of that letter is attached hereto as Exhibit B, and hereinafter referred to as “Initial Response”.

3.6 To date, NCUA has not provided any response to the FOIA Request other than the Initial Response.

3.7 More than twenty (20) days passed between the date on which the NCUA received the FOIA Request and the date on which the NCUA notified FNWCU whether it would fully comply with the request.

3.8 NCUA did not provide to FNWCU the required notices and information that the NCUA is mandated to provide under 5 U.S.C. § 552 and 12 C.F.R. 792 *et seq.* when the NCUA failed to respond to the FOIA Request within the required time frame.

3.9 FNWCU has exhausted all applicable administrative remedies with respect to the FOIA Request.

3.10 In the Initial Response, NCUA asserted that unusual circumstances raised by the FOIA Request required an extension of time for NCUA to properly respond to the FOIA Request.

3.11 On information and belief, the assertion of unusual circumstances raised in the Initial Response is not justified, especially when the NCUA is failing to release current NCUA indices that the NCUA's regulations in 12 C.F.R. 792 *et seq.* state are readily available to the public upon request for the purpose of assisting FOIA requesters in making FOIA requests to the NCUA.

3.12 By not responding to FNWCU's request until July 23, 2019, NCUA unduly delayed its Initial Response and breached its duties under 5 U.S.C. § 552 and 12 C.F.R. 792 *et seq.*

3.13 By not producing any records as part of the Initial Response, NCUA unduly delayed its production and breached its duties under 5 U.S.C. § 552 and 12 C.F.R. 792 *et seq.*

3.14 By not providing the required notices and information upon its delay of the Initial Response, NCUA breached its duties under 5 U.S.C. § 552 and 12 C.F.R. 792 *et seq.*

3.15 The NCUA is violating 5 U.S.C. § 552 and 12 C.F.R. 792 *et seq.* by failing to conduct a search reasonably calculated to uncover all records responsive to each request of FNWCU and is unlawfully withholding records responsive to each of FNWCU's requests, resulting in unreasonable delay in disclosing non-exempt documents requested by FNWCU in its FOIA Request.

3.16 An actual, substantial, justiciable controversy exists between FNWCU and NCUA regarding whether NCUA violated the rights of FNWCU under the Freedom of Information Act.

3.17 The controversy regarding the obligations of NCUA has been and continues to be adverse to FNWCU's legal interests, in that the relief to which FNWCU is entitled is the right to a review of records without the requirement that it institute and participate in this litigation.

3.18 The controversy is of sufficient immediacy and reality to warrant declaratory relief, because a declaration of rights will avoid needless litigation in this matter, causing increased expenses, delay, and prejudice to FNWCU and all parties.

IV. CAUSES OF ACTION

4.1 FNWCU seeks those equitable remedies and legal damages against NCUA available under all legal and equitable causes of action supported by the short, plain statement of facts set forth herein, either combined or in the alternative.

4.2 Without limiting the legal and equitable causes of action which may be

pursued in this matter, FNWCU's causes of action against NCUA expressly include a violation of 5 U.S.C. § 552 and 12 C.F.R. 792 *et seq.* and request for declaratory judgment.

V. PRAYER FOR RELIEF

WHEREFORE, FNWCU prays as follows, either combined or in the alternative:

A. For an order compelling NCUA to make the information sought in the FOIA Request available for public inspection in accordance with the provisions of 5 U.S.C. § 552 and 12 C.F.R. 792 *et seq.*;

B. For an order that NCUA show cause as to why it refused to comply with 5 U.S.C. § 552 and 12 C.F.R. 792 *et seq.*;

C. For a judgment declaring the rights and responsibilities of the parties and, in particular, declaring that NCUA must produce the requested records pursuant to federal law;

D. For an expedited proceeding in this action so as not to permit NCUA's violation of law to avoid judicial scrutiny;

E. For an award of reasonable attorney's fees and costs incurred in pursuit of this action, pursuant to the Federal Rules of Civil Procedure and 5 U.S.C. § 552(a)(4)(E); and

F. For such other and further relief as the Court may deem just and equitable.

DATED this 12th day of September, 2019.

CREASON, MOORE, DOKKEN & GEIDL, PLLC

/s/ _____
Samuel T. Creason
Attorneys Plaintiff, Freedom Northwest
Credit Union

CREASON, MOORE, DOKKEN & GEIDL, PLLC

LAWYERS

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*ADMITTED IN IDAHO AND WASHINGTON

June 5, 2019

FOIA REQUEST

Office of General Counsel
Attn: FOIA Officer
1775 Duke Street
Alexandria, VA 22314-3428

**Re: Freedom of Information Act Request for National Credit Union Administration
("NCUA") Records**

Dear FOIA Officer:

Under the Freedom of Information Act, I am requesting access to the following records on behalf of Freedom Northwest Credit Union:

1. The Directives Control Index referenced at 12 C.F.R. § 792.03(b).
2. The most current NCUA Secondary Capital Best Practices Guide.
3. The NCUA'S Secondary Capital Best Practices Guide issued by the NCUA Office of Small Credit Union Initiatives in or about October 2015 ("2015 Best Practices").
4. All records related to the implementation and/or repeal of the 2015 Best Practices, including without limitation all documents authorizing the implementation and/or repeal.
5. A copy of NCUA procedures to implement and/or repeal NCUA best practices guides.

I agree to pay all applicable fees pursuant to 12 C.F.R. § 792.08(c). You may respond to this request by electronic mail at todg@cmd-law.com.

If you have any questions processing this request, you may contact me at the following telephone number: 208-743-1516.

EXHIBIT A

Very truly yours,

CREASON, MOORE, DOKKEN & GEIDL, PLLC



Tod D. Geidl

hlb

cc: Scott Garrett
Freedom Northwest Credit Union



National Credit Union Administration
Office of General Counsel

July 23, 2019

SENT BY E-MAIL

Tod D. Geidl, Esq.
Creason, Moore, Dokken & Geidl, PLLC
1219 Idaho Street
P.O. Drawer 835
Lewiston, ID 83501

Dear Mr. Geidl:

RE: 19-FOI-00065

This is to update you on our office's processing of your June 11, 2019, Freedom of Information Act request to the National Credit Union Administration. You requested:

- 1) Directives Control Index referenced at 12 CFR 792.03(b);
- 2) most current NCUA Secondary Capital Best Practices Guide;
- 3) NCUA's Secondary Capital Best Practices Guide ("2015 Best Practices") issued by the NCUA's OSCUI in or about October 2015;
- 4) records related to the implementation and/or repeal of the 2015 Best Practices to include documents authorizing the implementation and/or repeal; and
- 5) a copy of the NCUA's procedures to implement and/or repeal NCUA best practices guides.

Your request necessitates additional time to consult among multiple NCUA components with substantial subject matter interest. 12 C.F.R. § 792.16(a)(3). Consequently, while the targeted response date is July 24, 2019, we are still processing your request due to a heavy FOIA caseload. 12 C.F.R. § 792.15.

You may telephone me (direct 703-518-6561) and FOIA staff at 703-518-6540 or e-mail us at FOIA@ncua.gov, with FOIA questions, to limit your request scope, or to discuss an alternative processing time frame. 12 C.F.R. § 792.16(c).

Sincerely,

REGINA METZ
Digitally signed by REGINA
METZ
Date: 2019.07.23 16:47:55
-04'00'

Regina Metz
Senior Attorney Advisor

GC/RM
19-FOI-00065